

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: David J. Wilson

Examiner: Marc D. Thompson

Serial No.: 09/731,019

Group Art Unit: 2144

Filed: December 7, 2000

Docket: 2043.060US1

USER EVALUATION OF CONTENT ON DISTRIBUTED COMMUNICATION
NETWORK

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in response to the Notice of Panel Decision from Pre-Appeal Brief Review mailed April 3, 2006 and further in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on December 21, 2005, from the Rejection of claims 1-2 and 7-17 of the above-identified application, as set forth in the Office Action mailed on June 21, 2005.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of \$500.00 which represents the requisite fee set forth in 37 C.F.R. § 41.2(b)(2). The Appellant respectfully requests consideration and reversal of the Examiner's rejections of pending claims.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, HALF.COM, INC. by virtue of an assignment from the inventor to Deja.com, Inc. recorded December 7, 2000 at Reel 011381, Frame 0896 and an assignment from Deja.com, Inc. to HALF.COM, INC. recorded December 13, 2001 at Reel 012368, Frame 0273.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

The present application was filed on December 7, 2000 with claims 1-6. In response to the non-final Office Action mailed March 12, 2004, Appellant canceled claims 3-6 and added claims 7-17. A Final Office Action (hereinafter “the Final Office Action”) was mailed September 21, 2004 and a non-Final Office Action was mailed June 21, 2005. Claims 1-2 and 7-17 stand twice rejected, remain pending, and the subject of the present Appeal.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Office Action dated June 21, 2005.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Some aspects of the present inventive subject matter include, but are not limited to, systems and methods for evaluating various content items in a distributed network environment. A user interface, such as illustrated in FIG. 1, may be configured to display scaled numerical ratings 102, review label 104, stored review 106, interactive element icon 110, and an indicator 112. (e.g., Page 5, lines 17-31)

Claim 1 recites a method for identifying as being helpful or otherwise valuable product/service reviews in a database coupled to a distributed communication network. (e.g., FIG. 4) This includes displaying product/service reviews (e.g., Page 5, lines 17-31, FIGS. 1 and 4) from the database on a client display connected to the database over the network, providing an interactive element 110 associated with each of the displayed reviews (e.g., review label 104) on the client display, which when clicked by a user, indicates that the user has found a displayed review associated with a product/service helpful in determining whether or not to purchase or use the product/service (e.g., FIG. 4, element 404, Page 6, lines 21-30). The method further includes receiving at the database an indication that the user has clicked the interactive element, and incrementing a count of a stored number of indications (e.g., FIG. 1, indicator 112, FIG. 4, operation 420, Page 8, lines 3-7) for the review (1) in response to the indication and (2) if the stored number of indications does not exceed one indication for the review from the user (e.g., FIG. 3, FIG. 4, operation 422, Page 7, lines 24-31). The method also displays the count of the stored number of indications for the review on the client display together with the review (e.g., FIG. 1, indicator 112, Page 8, lines 8-19).

Independent claims 9 and 14 are similar to independent claim 1 but relate to a system and machine-readable medium, respectively. The claim elements and supporting features of those claims can be found in the same citations as set forth above with respect to claim 1.

This summary does not provide an exhaustive or exclusive view of the present subject matter, and the Appellant refers to the appended claims and its legal equivalents for a complete statement of the invention.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether Claims 1-2 and 7-17 are unpatentable under 35 U.S.C. § 102(a) for anticipation by NOWTHIS.COM (nowthis.com blog, dated 11/24/1999), or in the alternative are unpatentable under 35 U.S.C. § 103(a) as obvious in view of Nowthis.

Whether Claims 1-2 and 7-17 are unpatentable under 35 U.S.C. § 103(a) over Epinions (www.epinions.com, October 12, 1999, hereinafter “Epinions”) in view of Salas et al. (U.S. 6,230,185, hereinafter “Salas”).

Whether Claims 1-2 and 7-17 are unpatentable under 35 U.S.C. § 103(a) over Klingman (U.S. 5,950,172, hereinafter “Klingman”).

7. ARGUMENT

A) The Applicable Law under 35 U.S.C. §102

To anticipate a claim, the reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

B) Discussion of the rejection of Claims 1-2 and 7-17 as rejected under 35 U.S.C. § 102(a) for anticipation by NOWTHIS.COM (nowthis.com blog, dated 11/24/1999, hereinafter, “Nowthis”), or in the alternative under 35 U.S.C. § 103(a) as obvious in view of Nowthis.

Because Nowthis fails to teach each and every element of claim 1, Appellant respectfully requests reversal of the 35 USC § 102(a) rejections. In rejecting claim 1 under §102(a), the Office Action alleges Nowthis disclosed Amazon.com as having implemented each and every claim limitation, including, “...incrementing a count of a stored number of indications for the review (1) in response to the indication and (2) if the stored number of indications does not exceed one indication for the review from the user.” The “reference,” a blog quote from Nowthis, is duplicated below:

- He also points out that Amazon is getting into the ratings-rating business ("Amazopinions?"):

1 people found this review helpful. 0 did not.
Was it helpful to you? [YES] [NO]

("Heheh. They said '1 people'. Heheh. Buncha dorks." -- Beavis the grammar cop)

Specifically, the Office Action of June 21, 2005 (hereinafter, "Office Action") states, "... 'x people', it must be presumed that each person is entitled to a single vote, since a second vote from the same person would not increase the number of 'people' referenced." (Office Action, pg. 6, ¶15) However, Nowthis, in its entirety, is a blog quote from a user who is quoting another person. See Nowthis pages 1 and 2, "A couple of notes courtesy of Seth Golub (I think Seth would make an excellent ogger...he's kind of busy with a research project and a postgrad education though):... He also points out that Amazon is getting into the ratings-rating business ("Amazopinions?"): 1 people [sic] found this review helpful. 0 did not. Was it helpful to you? [YES] [NO]." (Emphasis added).

The Office Action also alleges obviousness using Nowthis in view of Official Notice that, "mechanisms for limiting users to a single input were notoriously well known in the art." (Office Action, page 6, ¶17) The Office Action goes on to say, "Since the reference specifically discloses 'x people'...the inclusion of functionality to preclude a 'people' or a 'person' to a single submitted entry would be obvious...." However, Nowthis does not specifically disclose "x people," it discloses a person's blog entry that is referencing what another person said or wrote, specifically, "1 people [sic] found this review helpful. 0 did not."

Significantly, the disclosures in Nowthis appear to be nothing more than speculation as to text that could conceivably be included in a user interface. It is rampant speculation to guess what functionality could be embodied in a system that generated such an interface. Simply put, the speculative discussion regarding text that could be provided in a user interface does not approach disclosure of each and every limitation of

claim 1. Appelleant thus contends that the rejection under 35 USC § 102(a) is improper.

If the Examiner was aware of additional discussion or description which provides further details regarding the speculative feature described in Nowthis, the Examiner has been invited to make such additional discussion or description of record.

Additionally, as previously mentioned in prior responses, there is simply no disclosure in Nowthis of limiting a person to one review. The Examiner has relied upon Official Notice to attempt to bridge this gap.

Official Notice that mechanisms for limiting voting/opinion inputs by the same user/person/individual/etc. to a single, definitive position, implemented in a computer networking environment was well known in the art at the time the invention was made (Office Action pg. 3, ¶8).

The Office Action states:

...a concern for limiting a person/voter with one, and only one vote, has been a concern since the earliest of elections known to mankind. Any discussion of truly democratic proceedings necessarily involves the equivalence of all individuals casting votes or opinions, and the limiting of input from each individual to a single, concrete position. (Office Action pg. 2 and 3, ¶6).

Appellant fails to see the relevance to taking official notice under MPEP § 2144.03. The Examiner has asserted the limitation of “incrementing a count...(2) if the stored number of indications does not exceed one indication for the review from the user,” as such common knowledge that it warrants Official Notice of Fact status. The Examiner has even cited prior patents that allegedly describe various systems that require one vote per user. This is a limitation of a claim, not an irrefutable long standing fact as contemplated by an Official Notice, for example, *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943) (accepting the examiner’s finding that a brief heating at a higher temperature was the equivalent of a longer heating at a lower temperature...). Applying the Examiner’s standard for Official Notice would result in very few claim

elements escaping “Official Notice” as every limitation of a claim would have to be novel. Additionally, one vote one user is not an absolute, irrefutable long standing of fact, there certainly are other voting schemes that give people more than one vote. For example, corporate votes based on numbers of shares held, etc.

Independent claims 9 and 14 have substantially similar limitations as claim 1. Therefore, it is respectfully submitted the rejections of these independent claims and their respective dependent claims under U.S.C. § 102(a) should be reversed.

C) The Applicable Law under 35 U.S.C. §103

The Examiner has the burden under 35 U.S.C. § 103 to establish a prima facie case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In order for the Examiner to establish a prima facie case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. M.P.E.P. § 2142 (citing *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). MPEP 2143.01

D) Discussion of the rejection of Claims 1-2 and 7-17 as rejected under 35 U.S.C. § 103(a) as being unpatentable over Epinions (www.epinions.com, October 12, 1999, hereinafter “Epinions”) in view of Salas et al. (U.S. 6,230,185, hereinafter “Salas”).

If modified as proposed, Salas would be unsatisfactory for its intended purpose. Salas allows contributors to a discussion group to enter in questions that are voted on by others in the discussion group. The Epinions reference does not allow for the entering of questions. Rather there is one type of question relating to rating the helpfulness of a review, which cannot be created or modified by the users. Therefore, if this modification to Salas were made, contributors would not be allowed to input different questions, which would change the intended purpose of the discussion group. In other words, if such a modification is performed, the contributors of the discussion group could not enter questions and voting thereof. This would preclude discussion and interaction among the users as intended in Salas.

Furthermore, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP § 2143. The Examiner must avoid hindsight. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

The Office Action indicates that the Epinions reference and Salas may be combined because both relate to typical HTML. See Office Action at ¶22- ¶24. Appellant respectfully traverses, since that motivation comes from the Appellant's disclosure or in hindsight, and not from either reference. As noted in the Office Action, there is nothing in the citations of the Epinions reference related to limiting a user to one indication of a review. Moreover, there is nothing in the citations of Salas that indicates that limiting the user to one vote is applicable to rating the usefulness of product/service reviews.

Moreover, Appellant respectfully submits that the cited references do not teach or suggest all the claim limitations. As stated above, among the differences, claim 1 recites:

receiving at the database an indication that the user has
clicked the interactive element, and incrementing a count of
a stored number of indications for the review (1) in
response to the indication and (2) if the stored number of

indications does not exceed one indication for the review from the user. (emphasis added).

The Office Action indicates that “Epinions did not expressly disclose the prohibition of a user to indicate usefulness of a review only once.” (Office Action at ¶22). The Office Action then indicated that:

since Epinions gathered voted opinions and was enabled for usage in a typical Internet browser application, and utilized well known and widely implemented HTML markup language for presentation dictation, an ordinary artisan would have been motivated to search the related arts to isolate teachings dealing directly with web page technology which disclosed specifics of the voting mechanism(s) available at the time of invention.

Office Action at ¶22.

The Office Action then stated that “[i]n these arts, Salas specifically disclosed a voting/polling mechanism utilized in typical HTML documents acting to optionally limit input from particular user(s) to one (1). See, inter alia, Column 16, Lines 33-54.” Office Action at ¶23.

In contrast to claim 1, as noted by the Office Action, Epinions does not disclose the prohibition of a user to indicate usefulness of a review only once. Moreover, the citation in Salas does not relate to whether a user has or has not found a review of a product or service helpful. Rather, the citation in Salas relates to the following:

In the course of conducting a discussion on a particular topic of interest, whether embedded or stand-alone, a contributor to the discussion may survey the discussion group members with regard to a particular question. Salas at column 15, lines 47-50.

This citation in Salas does not disclose or suggest the voting on a usefulness of a product/service review. Rather, this citation in Salas relates to voting on a question posed

by a contributor of a discussion group. Neither reference discloses voting on the usefulness of a product/service review wherein a user is limited to one review. Therefore, neither Epinions nor Salas teaches or suggests all of the limitations of claim 1. Independent claims 9 and 14 have substantially similar limitations as claim 1. Therefore, it is respectfully submitted the rejections of these independent claims and their respective dependent claims under U.S.C. § 103 should be reversed.

E) Discussion of the rejection of Claims 1-2 and 7-17 as rejected under 35 U.S.C. § 103(a) as being unpatentable over Klingman (U.S. 5,950,172, hereinafter “Klingman”).

Klingman discusses a system providing secure rating information using means available on most telephone equipment, either POTS (plain old telephone system) or ISDN (integrated services digital network), based upon consumers' satisfaction relating to products purchased through electronic transmission media such as the Internet. The system may be generalized to provide a secure weighted voting system based on a voters list indexed with or keyed to, caller IDs. (Field of Invention)

The OA at page 9, ¶29 alleges Klingman, “...disclosed the invention substantially as claimed, Klingman did not expressly disclose the reviewing of reviews.” The claims of the present application specifically recite, in the preamble and in the claim elements, “identifying as being helpful or otherwise valuable product/service reviews,” “displaying product/service reviews,” “providing an interactive element associated with each of the displayed reviews,” etc. It is clear the claims as recited are substantially about reviewing reviews.

Since Klingman does not disclose the elements as recited in independent claim 1 and does not suggest that reviewing reviews is desirable, it would have not been obvious for an “artisan” (a person skilled in the art) to combine the teachings of Klingman. Particularly in light of Klingman’s teachings with respect to submitting reviews of products through a dedicated telephone line/number with what was known in the art at the time of the invention based on a security protocol that uses caller ID to ensure, as best

as possible, the person who made the purchase (via an 800 number) scores/reviews the product via the 900 number. (col. 15, ln. 35-47)

Independent claims 9 and 14 have substantially similar limitations as claim 1. Therefore, it is respectfully submitted the rejections of these independent claims and their respective dependent claims under U.S.C. § 103 should be reversed.

8. SUMMARY

For at least the reasons argued above, the independent claims 1, 9, and 14 were not properly rejected under § 102 and § 103. Therefore, reversal of the rejections and allowance of the pending claims is respectfully requested.

Respectfully submitted,

DAVID J. WILSON

By his Representatives,

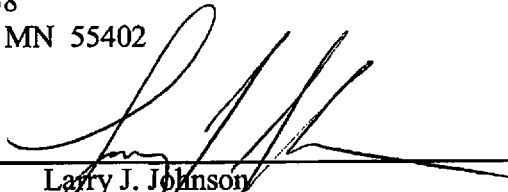
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Appeal Brief- Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 3 day of ~~April~~^{May}, 2006.

Peter Rebuffoni
Name


Signature

CLAIMS APPENDIX

1. (Rejected) A method for identifying as being helpful or otherwise valuable product/service reviews in a database coupled to a distributed communication network, the method comprising:
displaying product/service reviews from the database on a client display
connected to the database over the network;
providing an interactive element associated with each of the displayed reviews on the client display, which when clicked by a user, indicates that the user has found a displayed review associated with a product/service helpful in determining whether or not to purchase or use the product/service;
receiving at the database an indication that the user has clicked the interactive element, and incrementing a count of a stored number of indications for the review (1) in response to the indication and (2) if the stored number of indications does not exceed one indication for the review from the user;
and
displaying the count of the stored number of indications for the review on the client display together with the review.
2. (Rejected) The method of claim 1, further comprising sorting the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order.

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7. (Rejected) The method of claim 1, further comprising:
compiling a list of reviewers including names of those reviewers who have
received a highest number of indications for their product/service reviews;
and
displaying the list of reviewers on the client display.
8. (Rejected) The method of claim 1, further comprising sending an error to the user
if the interactive element is clicked more than once by the user for the review.
9. (Rejected) A system for identifying as being helpful or otherwise valuable
product/service reviews in a database coupled to a distributed communication
network, the system comprising:
a first computer coupled to the database over the network, the first computer
having a display to
display product/service reviews from the database,
provide an interactive element associated with each of the displayed
reviews, which when clicked by a user, indicates that the user has
found a displayed review associated with a product/service helpful
in determining whether or not to purchase or use the
product/service, and
display a count of the stored number of indications for the review together
with the review; and
a second computer coupled to the first computer, the second computer to receive
an indication that the user has clicked the interactive element, and to
increment a count of the stored number of indications for the review (1) in
response to the indication and (2) if the stored number of indications does
not exceed one indication for the review from the user.

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10. (Rejected) The system of claim 9, wherein the second computer is further to sort the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order on the first computer.
 11. (Rejected) The system of claim 9, wherein the second computer is further to compile a list of reviewers including names of those reviewers who have received a highest number of indications for their product/service reviews, and to provide the list of reviewers to the first computer.
 12. (Rejected) The system of claim 11, wherein the first computer is further to display the list of reviewers.
 13. (Rejected) The system of claim 9, wherein the second computer is further to send an error to the first computer if the interactive element is clicked more than once by the user for the review, wherein the first computer is utilized to display the error to the user.
 14. (Rejected) A machine-readable medium having stored thereon data representing sets of instructions for identifying as being useful or otherwise valuable product/service reviews in a database coupled to a distributed communication network, the sets of instructions which, when executed by a machine, cause the machine to:
 - display product/service reviews from the database on a client display connected to the database over the network;
 - provide an interactive element associated with each of the displayed reviews on the client display, which when clicked by a user, indicates that the user has found a displayed review associated with a product/service helpful in determining whether or not to purchase or use the product/service;

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- receive at the database an indication that the user has clicked the interactive element, and incrementing a count of a stored number of indications for the review (1) in response to the indication and (2) if the stored number of indications does not exceed one indication for the review from the user; and
- display the count of the number of indications for the review on the client display together with the review.
15. (Rejected) The machine-readable medium of claim 14, wherein the sets of instructions which, when executed by the machine, further cause the machine to sort the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order.
16. (Rejected) The machine-readable medium of claim 14, wherein the sets of instructions which, when executed by the machine, further cause the machine to: compile a list of reviewers including names of those reviewers who have received a highest number of indications for their product/service reviews; and display the list of reviewers on the client display.
17. (Rejected) The machine-readable medium of claim 14, wherein the sets of instructions which, when executed by the machine, further cause the machine to send an error to the user if the interactive element is clicked one than once by the user.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.